

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO: WESTERN DIVISION

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NORTHERN DISTRICT OF OHIO
TOLEDO

Magnum Towing and
Recovery LLC et al.

Plaintiff

vs.

CITY OF TOLEDO, et al.

Defendant

CASE NO. 3:04CV7671

JUDGE JAMES G. CARR

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Now comes Plaintiffs, by and through the undersigned counsel, who move this Court for a Temporary Restraining Order preventing Defendants from requiring Plaintiffs to utilize the City of Toledo's new impound lot slated to open September 1, 2005. See attached newspaper article. Plaintiff Magnum Towing and Recovery LLC performs police ordered tows under Defendant City of Toledo's direction. The police ordered tows, including the storage of towed vehicles and final disposition of towed vehicles, are governed by Toledo Municipal Code §765. TMC § 765 was amended by the City Council of Toledo on January 11, 2005 "to require that vehicles towed at the request of the police be taken to a City of Toledo owned or operated storage facility." (Ord. 649-04/39-05). The City of Toledo proceeded to purchase property and intends to open its own impound lot on September 1, 2005. While the amended code does provide that police tows may still be stored at towers lot, Defendant has made it clear that absent special circumstances, all vehicles from police ordered tows will be taken to and stored at the new city

lot.

Plaintiff Magnum Towing, as well as the other police towers for that matter, will be effectively prevented from collecting any storage fees as well as any fees generated from the auctioned off vehicles as well as the “junked” vehicles. This deprivation of Magnum Towing’s property interest is unconstitutional and contrary to law.

The Fourteenth Amendment to the United States Constitution provides that “No state shall... deprive any person of life, liberty, or property without due process of law.” Defendant’s have implicitly acknowledged that police towers have a constitutionally protected property interest in participating in police tows. TMC § 765 et seq. does provide for procedural due process measures regarding the city suspending or revoking towers participation in the police tow list. (Whether the city adheres to these measures is an entirely different question.) The towers, if suspended or revoked, have a right to review before the City of Toledo Towing Board of Review, with any such suspension stayed pending the appeal. The towers then have the further option of filing an appeal into state court.

No such procedural due process provisions exist relative to the city taking over all aspects of the storage/disposition of vehicles component of the police tow business. Absent a right to be heard, the City’s commandeering of the police tow storage business from Plaintiff constitutes an unconstitutional abridgment of Plaintiff’s due process rights. If the Defendant’s are not restrained from ordering Plaintiff to take all police tows (including the vehicles already being stored at Plaintiff’s facilities) to the City lot, Plaintiff will suffer immediate and irreparable harm. The storage fees generated from police tows far exceed the revenue generated from the tows themselves. In fact, the city does not intend to even fully compensate Plaintiff for the storage fees already incurred by Plaintiff for police tow vehicles currently being stored at Plaintiffs facility.

Wherefore, Plaintiff moves this Court for an order preventing Defendant from ordering police tows to be taken to the City's impound lot; attorney fees and costs for the preparation of this Motion and subsequent hearing, if necessary; and such other relief as the Court Deems proper. Plaintiff would also request this matter be set for hearing as soon as possible, as Plaintiff's business livelihood is threatened.

Respectfully Submitted,



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Certificate of Service

This is to certify that a copy of the foregoing was served by fax and ordinary mail upon the City of Toledo Department of Law this 31 day of August, 2005.



Timothy A. Magee
Counsel for Plaintiff

Attn: Tim McGee
Re: Police Tow Lot

Toledo Blade Thursday, August 25, 2005

\$2.8 MILLION FACILITY

Police tow lot in final stages of work for opening Sept. 1

By CHRISTINA HALL

BLADE STAFF WRITER

Toledo's controversial city-owned police tow lot is tentatively scheduled to open Sept. 1, after much debate and two lawsuits by towing companies trying to stop the plan.

City officials said the estimated \$2.8 million facility on Dura Avenue near Detroit Avenue in North Toledo will be a one-stop shop that's more convenient to vehicle owners who now must travel to more than a dozen lots scattered throughout the city. They also hope it will generate \$454,000 a year in revenue for the city's general fund.

The lot is expected to be open to the public from 7 a.m. to 5 p.m. daily, including holidays and weekends, but that may change depending on the amount of traffic and busy times for vehicles being claimed.

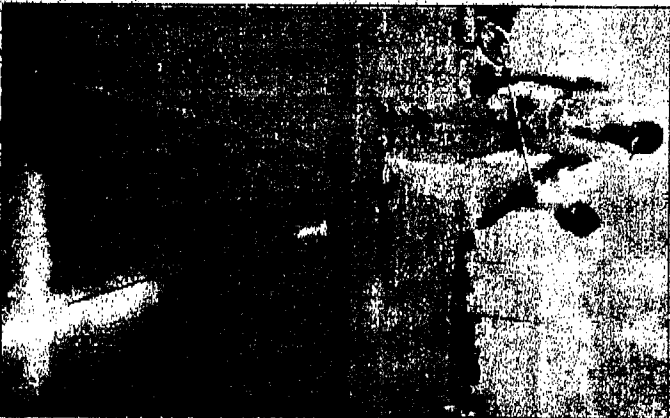
Rates will stay the same as at other tow lots: \$85 for the tow and \$12 a day for storage.

Workers have been preparing 21 acres of the 35-acre site since the spring. Safety Director Joe Walter said. He said there is a retention pond for storm water runoff, a new sewer, and a water main for hydrants, and the foundation has been poured for a temporary office building.

Some fencing has been installed, and some areas have been graded. Work is being done on the security system and an undisclosed number of cameras. The lot will be illuminated by nearly two dozen lights.

Deputy Police Chief Don Kenney said a road was cut in off Dura to the site. He said the storage area, which will hold several thousand vehicles, will be gravel. Although police tow about 14,000 vehicles a year, he does not expect the lot to overflow. Police are planning to hold some auctions of unclaimed.

See TOW LOT, Page 2



Craig Meyer, left, and Jorge Chirinos both Toledo city workers, apply markings to the asphalt at the city's new police tow lot off Dura Avenue in North Toledo. Plans call for the lot to be opened Sept. 1. The lot includes 35 acres, lights, surveillance cameras, and security fences are in the process of being installed, much to the dismay of local tow operators who have been opposed to the city venture.